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Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-1162

MARIO CUEVAS, LOUIS ZE CAVE, SALVADOR ZERMENO, OSCAR HERNANDEZ, and JAMES B. BUTLER,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF GEORGIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant Attorney General

DON A. LANGHAM
First Assistant Attorney General

JOHN C. WALDEN
Senior Assistant Attorney General

SUSAN V. BOLEYN
Assistant Attorney General

DUPONT K. CHENEY
District Attorney

KENNETH R. CARSWELL
Assistant District Attorney

Please serve:

SUSAN V. BOLEYN
132 State Judicial Bldg.
40 Capitol Square, S.W.
Atlanta, Georgia 30334
(404) 656-3397

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QUESTION PRESENTED

Whether a search warrant, identifying the county to be searched in the supporting affidavit and describing with particularity the place to be searched within the body of the warrant itself meets the requirements of the Fourth Amendment?

PART ONE

STATEMENT OF THE CASE

Petitioners, Mario Cuevas, Louis Ze Cave, Salvador Zermeno, Oscar Hernandez and James B. Butler, were convicted in the Superior Court of Liberty County, Georgia, on one count of possession of marijuana with intent to distribute. On appeal to the Court of Appeals of Georgia, Petitioners cited as error the denial by the trial court of their motion to suppress evidence which they asserted was obtained as the result of a series of illegal searches and seizures which were made without the necessary probable cause. The searches and seizures alleged to have been illegally conducted were made following the issuance of a search warrant by a justice of the peace on March 14, 1978 at 9:15 a.m. The search warrant itself was entitled with the words "Sheriff's (handwritten) Department", "Search Warrant", "Georgia, Liberty (handwritten) County", "Justice of Peace (handwritten) Court". The search warrant was addressed to "All Peace Officers of the State of Georgia" and the body of the search warrant read in pertinent part as follows:

> "Affidavit having been made before me by John Dasher (handwritten), an officer charged with the duty of enforcing the Criminal Laws, that he has reason to believe that in_____ (blank space) County, Georgia on the following described premises:

> A concrete block warehouse Located on Ga. Hwy. 38 approx. 3/10 of a mile east of the SCL Railroad tracks and bearing a sign 'Coastal Sign Co." and a metal building with overhead door located next to the warehouse and the curtilage of these buildings and in the following described vehicle: an enclosed truck, red cab, white body, International Harvester make, bearing GB 3761, Mississippi plates parked next to the above warehouse and a two door thunderbird auto, maroon over grey color, Ga. tag NCH 683.(handwritten) There is now located certain property, namely Marijuana (handwritten) which is contraband, the possession of which is illegal. (handwritten)" [1/]

The trial court found that the search warrant was legally sufficient to enable the officers to ascertain and identify the place intended with reasonable certainty. The trial court noted that the supporting affidavit of the search warrant indicated that the location was Liberty County

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[1/] A certified copy of the original search warrant and affidavit in support of the search warrant was submitted to the Clerk of this Court along with the required number of briefs to this Court, should this Court wish to use the original search warrant which was considered by both the trial and appellate court in Georgia.

and that the face of the search warrant itself had the caption "Liberty County". The affidavit for the search warrant was captioned Liberty County and identified the premises to be searched as being in Liberty County, Georgia. The trial court further noted that the body of the search warrant specifically described the location of the warehouse to be searched so as to allow a law enforcement officer to "locate the place definitely and with reasonable certainty." The Georgia Court of Appeals considered Petitioners' enumeration of error in support of their allegation that illegal searches and seizures had been conducted. Petitioners enumerated five separate claims as the basis for error to the Court of Appeals of Georgia but now seek review from this Court only as to whether or not searches and seizures were invalid due to the fact that Petitioners claim that the warrant did not designate the county in which the warehouse was located or where the warrant was to be executed. The Georgia Court of Appeals determined that the description contained in the warrant complied with both Georgia law and federal law.

Respondent relies on the statement of facts as set forth in the opinion of the Court of Appeals of Georgia attached as an appendix to the brief of the Petitioners and will refer to this statement of the facts in discussing the allegation raised by the Petitioners before this Court.

PART TWO

REASON FOR NOT GRANTING THE WRIT

THE GEORGIA COURT OF APPEALS PROPERLY HELD THAT THE SEARCH WARRANT WAS ISSUED IN ACCORDANCE WITH FOURTH AMENDMENT REQUIREMENTS.

Petitioners argue that the Court of Appeals of Georgia improperly upheld the validity of the search warrant issued in this case. Petitioners contend that the search warrant did not meet the Fourth Amendment requirement that the place to be search must be described with particularity.

Petitioners cite this Court's decision in Steele v. United States, 267 U.S. 498, 503 (1925), as setting out the standard by which a search warrant's description must be judged. This standard is the same standard utilized by the Court of Appeals of Georgia in upholding the description contained in the search warrant issued in the instant case. This Court stated in Steele v. United States, supra, that "It is enough if the description is such that the officer can, with reasonable effort ascertain and identify the place intended." The Georgia Court of Appeals noted that this was not only the federal standard, but also the standard adopted by the appellate courts in Georgia. The Court of Appeals of Georgia also noted that under Ga. Code Ann. § 27-303, relating to the grounds for the proper issuance of a search warrant, a law enforcement officer must

make a written complaint ". . . which particularly describes the place or person, or both, to be searched and things to be seized. . ."

Therefore, as Petitioners cite as the applicable standard, the same standard utilized by the Court of Appeals of Georgia, the only issue left for resolution is whether or not the standard for evaluating the validity of a description in a search warrant was properly applied by the Court of Appeals of Georgia.

For the purpose of interpreting this standard for evaluating a search warrant's description of the premises to be searched, Petitioners cite United States v. Darensbourg, 520 F.2d 985 (5th Cir. 1975). A portion of the Court's decision in United States v. Darensbourg, supra, not quoted by Petitioners, cites a decision of this Court in support of its interpretation of the proper standard to be applied. The Court of Appeals for the Fifth Circuit stated:

> "The test is one of reasonableness and '[t]echnical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area.' U.S. v. Ventresca, 380 U.S. 102, 108, 85 S.Ct. 741, 746, 13 L.Ed.2d 684, 689 (1965)."

Respondents assert that under the reasonableness test, the description in the search warrant in this case meets the Fourth Amendment requirements, even if there may be technical

defects in the specific details of the warrant. The search warrant itself has the caption, "Liberty County," even though the applicable county is left blank in the body of the search warrant. Furthermore, the actual premises to be searched are described in detail in the body of the search warrant. The description includes the exact location (Hwy. 38, 3/10 of a mile east of the SCL railroad tracks), a physical description of the warehouse (concrete block bearing a sign "Coastal Sign Co.") and a description of what was in the curtilage (a metal building with an overhead door; an enclosed truck, red cab, white body, International Harvester make, bearing GB 3761 Mississippi plates; and a two door Thunderbird automobile, maroon over grey, Georgia Tag NCH 683).

Additionally, the affidavit upon which the serach warrant is based contains the information which Petitioner contends was lacking in the search warrant itself. The affidavit is captioned "Liberty County" and also indicates that the premises to be searched are in Liberty County.

Petitioners complain that the Court of Appeals of Georgia improperly cited Vaughn v. State, 141 Ga. App. 453 (1977) in support of its decision upholding the search warrant. Petitioners state that the warrant in the instant case suffers from the "identical defect" which invalidated the search warrant in Vaughn v. State, supra. The Court of Appeals noted in Vaughn v. State, supra that, "No designation is made as to any city, county or state as to the location of said 'house trailer,' but the affidavit was sworn to by the deponent before a justice of the peace in Hall County." Id. at 454. The search warrant in the instant

case is clearly distinguishable from the warrant in Vaughn, as the search warrant designates Liberty County, Georgia as the location of the premises to be searched as does the supporting affidavit. In Vaughn v. State, supra, the affidavit contained neither the city, county or state in which lay the premises to be searched.

In United States v. Avarello, 592 F.2d 1339 (5th Cir. 1979), the Court of Appeals for the Fifth Circuit reviewed two of its former decisions upholding the descriptions of premises to be searched contained in search warrants. In United States v. Melanchon, 462 F.2d 82 (5th Cir. 1972) the Fifth Circuit Court of Appeals upheld a search warrant in which a wrong numerical address was given. The Court stated, "An error in description is not automatically fatal to the validity of a search warrant." Id. at 94.

The Fifth Circuit Court of Appeals upheld the description contained in the search warrant in United States v. Darensbourg, 520 F.2d 985 (5th Cir. 1975) in which a wrong street address was given. Having reviewed these decisions, the Fifth Circuit Court of Appeals in United States v. Avarello, 592 F.2d 1339 (5th Cir. 1979) upheld a search warrant's description despite the fact that the wrong city was specified in the body of the search warrant.

As in this case, the premises to be searched were correctly listed in the captions of the search warrant and the affidavit. Furthermore, a detailed description of the premises to be searched, in that case, an apartment, was contained in the body of the search warrant, just as a detailed description of the premises to be searched was contained in the body of this search warrant.

The Court of Appeals for the Fifth Circuit found that when all of these factors were considered together, the description ". . . foreclosed the likelihood that a Dallas location would be mistakenly searched because of a single incorrect specification." Id. at 1344. In this case, the detailed descriptions in the warrant and the affidavit likewise foreclosed the possibility that the wrong location would be searched.

In support of its holding the Court of Appeals of Georgia cited Fomby v. State, 120 Ga. App. 387 (1969). In upholding the description given in that warrant, the Court noted that "The searches were limited in their scope to physically described persons in a specified vicinity." Id. at 387, 388. An examination of the search in the instant case would show a similar limitation as to the scope of the search, thus meeting Fourth Amendment requirements prohibiting "general warrants."

The description of the premises to be searched in the affidavit and the search warrant were unambigious and sufficient to enable an officer to identify the place to be searched with reasonable effort. Therefore, the Court of Appeals properly upheld the validity of the search warrant.

Assuming for the sake of argument, that the search warrant was defective, it should be noted that the Court of Appeals of Georgia also addressed the question of Petitioners' standing to contest the validity of the search and seizure conducted in this case. The court noted that under this Court's decision in Rakas v. Illinois, ___U.S.___, 99 S.Ct. 421 (1978) "a person who is aggrieved by an illegal

search and seizure only through the introduction of damaging evidence secured by search of a third person's premises or property has not had any of his Fourth Amendment rights infringed." On the basis of the evidence presented in this case, the Court of Appeals of Georgia determined that the Petitioners' Fourth Amendment rights were not violated because they had no "legitimate expectation of privacy" in the area which was searched. The Respondent asserts that regardless of the validity of the search warrant in this case, the Court of Appeals of Georgia properly determined that Petitioners' had no standing to object to the allegedly illegal search and seizure.

CONCLUSION

Respondent respectfully requests that this Court deny Petitioners a writ of certiorari as none of Petitioners' Fourth Amendment rights were violated by the issuance of the search warrant by a Justice of the Peace of Liberty County, Georgia.

Respectfully submitted,

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant
Attorney General

Please serve:

SUSAN V. BOLEYN
132 State Judicial Building
40 Capitol Sq. S.W.
Atlanta, Ga. 30334

/s/ Don A. Langham
DON A. LANGHAM
First Assistant
Attorney General

/s/ John C. Walden
JOHN C. WALDEN
Senior Assistant
Attorney General

/s/ Susan V. Boleyn
SUSAN V. BOLEYN
Assistant Attorney General

/s/ DuPont K. Cheney
DUPONT K. CHENEY
District Attorney

/s/ Kenneth R. Carswell
KENNETH R. CARSWELL
Assistant District Attorney

CERTIFICATE OF SERVICE

I, Susan V. Boleyn, Attorney of Record for the Respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of this Brief for the Respondent in Opposition by depositing three copies of same in the United States mail, with proper address and adequate postage to:

Mr. Richard J. Essen
Essen and Spiegel, P.A.
717 Ponce de Leon Boulevard
Suite 204
Coral Gables, Florida 33134

This 28th day of February, 1980.

Susan V. Boleyn
SUSAN V. BOLEYN